

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**OK FOODS, INC.**

**Employer**

**and**

**CASE NO. 14-RC-124829**

**UNITED FOOD AND COMMERCIAL  
WORKERS UNION, LOCAL 1000, AFL-CIO**

**Petitioner**

**EMPLOYER'S EXCEPTIONS TO HEARING OFFICER'S  
REPORT ON OBJECTIONS**

Employer, OK Foods, Inc. ("OK Foods" or "Company"), pursuant to Section 102.69 of the Rules and Regulations of the Board, respectfully files its exceptions to the Hearing Officer's Report On Objections in the above-captioned case. The bases for these exceptions are more fully set forth in OK Food's Brief in Support filed herewith.

OK Foods respectfully excepts to the following findings and conclusions:

A. First, the Hearing Officer erroneously concluded that the Employer granted 90-day wage increases and retroactive pay to unit employees to induce them to reject the Union's organizing attempt (Report, 9).

B. Second, the Hearing Officer erred in finding that the Employer failed to demonstrate any legitimate reason to explain the timing of the 90-day wage increases and retroactive pay (Report, 9).

C. Third, the Hearing Officer erred in not accepting the testimony of Goins and Terry regarding when the Employer discovered the 90-day pay raise/ back pay issue (Report, 10). The record simply does not support the Hearing Officer's contention.

D. Fourth, the Hearing Officer erred in finding that the Employer ignored its employees' complaints regarding payment of the 90-day wage increases/ back pay until the Union began its organizing efforts (Report, 10).

E. Fifth, the Hearing Officer erred in finding that statements made by Employer representatives Mike Martin and Mathew Perovic constituted a promise of additional wages conditioned on the Union's defeat (Report, 13).

F. Sixth, the Hearing Officer erred in considering the testimony of Jason Mueller and Kurtis Rorabaugh concerning statements made to them by Employer representative Diana Baker that the Employer could not resolve their wage complaint because of union activity (Report, 14).

G. Seventh, the Hearing Officer erred in finding that, on at least one occasion, the Employer engaged in objectionable conduct by telling an employee that it could not resolve his back wages until after the conclusion of the campaign (Report, 14).

H. Eighth, the Hearing Officer erred in concluding that statements made by Employer representative Diana Baker, a lower-level human resources manager at the Heavener facility, to unit employee Kenneth Rorabaugh that she could not discuss his back pay due to union activity, had a reasonable tendency to interfere with employees' free choice (Report, 14).

I. Ninth, the Hearing Officer erroneously concluded that the Employer engaged in objectionable conduct by impliedly promising employees a wage increase in return for their support in the election (relying on the Martin and Pervovic statements), and by telling one

employee that it could not resolve his wage complaint because of employees' union activity (relying on the comment made by Baker to Kenneth Rorabaugh) (Report, 14).

J. Tenth, the Hearing Officer erred in concluding that the CEO's statements did not negate the two innocuous statements made by other Employer representatives (Report, 14).

K. Eleventh, the Hearing Officer erroneously concluded that the CEO's assurances made during the critical period "ring hollow" when considering the Hearing Officer's finding that the Employer granted prepetition wage increases and retroactive pay to sway the election (Report, 14).

L. Twelfth, the Hearing Officer erroneously concluded that the CEO's assurances that the Employer would do the right thing after the election provided a "less-than-subtle" reminder that the Employer would remedy their problems if they voted against the Union (Report at 14).

M. Thirteenth, the Hearing Officer erroneously concluded that the Employer solicited employees' grievances and promised to remedy them as a means of undermining their support for the Union (Report, 16).

N. Fourteenth, Hearing Officer erred in finding that when the CEO met with Kenneth Rorabaugh and other employees at Rorabaugh's request, that the CEO "addressed the group, explaining that he would take questions" (Report, 15).

O. Fifteenth, the Hearing Officer erred in disagreeing with the Employer that the CEO's statements that he could not make any promises immunized the Employer's actions (Report, 16).

P. Sixteenth, the Hearing Officer erred in finding that certain conduct, namely the CEO not notifying employees if or how the Employer resolved each complaint, carried little significance (Report, 16).

Q. Seventeenth, the Hearing Officer erred in finding that the Employer resolved some of the employees' complaints (Report, 16).

R. Eighteenth, the Hearing Officer erred in using the prepetition conduct of the Employer granting wage increases and retroactive pay to support his argument that the employer solicited grievances and promised to remedy those grievances (Report, 16).

S. Nineteenth, the Hearing Officer erroneously concluded that the Employer engaged in objectionable conduct by soliciting and promising to remedy employees grievances (Report, 16).

OK Foods submits that the Hearing Officer's findings and conclusions that OK Foods engaged in objectionable conduct as set forth in his Report are contrary to the evidence and applicable law. As a result, the Hearing Officer's Report must not be adopted. Accordingly, OK Foods respectfully requests that the Board not adopt the findings of fact and conclusions of law made by the Hearing Officer, grant the Employer's Exceptions, and certify the May 1, 2014 election.

Respectfully submitted, this 28th day of November, 2014.



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#### CERTIFICATE OF SERVICE

I certify that on this 28<sup>th</sup> day of November, 2014, I served a copy of the Employer's Brief to the Hearing Officer on the Petitioner's counsel of record by U.S. Mail, postage prepaid, and by email as follows:

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